

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED
MISSOULA, MT

2006 JUN 2 PM 3 13

PATRICK E. DUFFY
BY

DEPUTY CLERK

ALEXANDRIA NICOLE TUCKER)

CV 02-54-M-DWM

Plaintiff,)

ORDER

vs.)

RICK DAY, MIKE MAHONEY,)
JAMES WAGNER, MARWAN SABA,)
All in their individual,)
and/or official capacities.)

Defendants.)

On April 28, 2006, United States Magistrate Judge Leif B. Erickson entered Findings and Recommendation on this matter.

Defendant's second motion to dismiss (doc. 43) is granted because neither Kris Elder, as the executor of Tucker's estate, nor anyone else has appeared on Tucker's behalf on this action within ninety days of notice of death. As no one has filed a motion for substitution, Fed. R. Civ. P. 25(a)(1) calls for dismissal of the action as to the deceased party.

Based on the foregoing reasons, this Court adopts Judge Erickson's Findings and Recommendation in full.

Accordingly, **IT IS HEREBY ORDERED:**

Defendants' second motion to dismiss (doc. 43) is **GRANTED** and the case should be **DISMISSED WITHOUT PREJUDICE**.

DATED this 2nd day of June, 2006.

Donald W. Molloy, Chief Judge
United States District Court